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Explanation of the fraudulent character of the claims of Mrs. Myra Clark Gaines. 1874.

EXPLANATION

OF THE

FRAUDULENT CHARACTER

OF ALL THE CLAIMS OF

MRS. MYRA CLARK GAINES.

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Washington

1874

IN THE MATTER OF THE CLAIM OF MRS. MYRA CLARK GAINES FOR THE CONFIRMATION OF CERTAIN LAND CLAIMS.

WASHINGTON, *March* 11, 1874.

To the Honorable Committee on Private Land Claims of the House of Representatives.

GENTLEMEN: *Is Mrs. Myra Clark Gaines exempt from the requirements of law, and to be treated differently from every other citizen?*

Such seems to be the pretension of this extraordinary suitor and her still more extraordinary present counsel. For two mortal hours this forenoon, the ears of the honorable members of this committee were assailed by the vilest billingsgate and the most flimsy attempt at reasoning they ever heard, not in support of her present claim, which has been effectually demolished by the Commissioner of the General Land Office and the Secretary of the Interior, but in an attack upon myself, who oppose her present claim, as I have opposed so many others. During her life-long litigation Mrs. Gaines has always been famous for abusing the lawyers opposed to her, and most of her own lawyers, to whom she made many contingent promises, none of which she ever kept. And her present counsel, whom you heard this morning, is her faithful adept in this kind of style. He had no reason for adopting this style towards me, except the desire of venting the spite of Mrs. Gaines against me, she sitting

by his side.* She has indeed good reason to detest me, and the principal of these reasons is that I exposed and destroyed the most stupendous fraud she had contemplated, and which began to enrich her at a rapid pace, when I crushed it.

The claim of Mrs. Gaines, now legitimately before the public authorities, is a claim for the confirmation of titles to certain lands in Louisiana, derived from sales made by Morales, the intendant of the Spanish province of West Florida, when that province still belonged to Spain, though it was afterwards, in 1819, ceded by Spain, with the rest of Florida, to the United States, and is now a part of Louisiana. These claims were filed under the provisions of an act of Congress of June 22, 1860, (12 Stat., 85,) renewed for three years by an act of March 2, 1867, (14 Stat., 544.) This act of 1860 was the first that ever gave a standing in court to these claims. (See decision of the Supreme Court in the case of the United States *vs.* Lynd's Heirs, 11 Wallace, 632.) That act required citizens who proposed to avail themselves of it to file their claims, with evidence and a sworn statement.

As the greater part of these claims stood in the name of Daniel Clark, at the time of his death, in 1813, the claimant should have filed evidence of her representative capacity; but that, or even the sworn statement, she dispensed with. How, upon a claim thus presented, the register and receiver then in office at the New Orleans land office, could make a favorable report, could not be understood by any one who

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*I allude to the Hon. H. S. Foote, ex-Governor, ex-Senator, ex-ex-ex —— —— of ever so many places. I do not believe he bears me a grudge for the part I took in preventing him from becoming a Louisiana lawyer. For, many years since, when I was a member of the committee of lawyers in New Orleans charged with the examination of candidates for admission to the bar, we rejected him twice, because we found that he knew as little of the Civil Code as I now find that he knows of the merits of the Gaines claim. For many years have I followed his public course through the newspapers, and find that he differs very little from other mortals, except in being the author of very fine children, and being very pleasant in private life, when he does not practice his new Washington vocation of *reviler general.*

has not, like myself, seen the condition of the New Orleans land office since its reorganization, after the war. This report was disapproved, for unanswerable reasons, by the Commissioner of the General Land Office, on the 14th of April, 1873, in his report to the Secretary of the Interior, which was communicated to the House of Representatives by the Secretary of the Interior, on the 3d of last December.

This report is now before your honorable committee, and it would be disrespectful to you to add anything to it, except that the hardihood to lay such a claim before the public authorities is an illustration of the pretension of Mrs. Gaines and her lawyers, announced at the outset of this paper, that she is above the law of the land.

But there is another reason why she could not swear to this claim before the register and receiver. She had parted with her claim to these lands, such as it was, by executing an absolute conveyance of them to Caleb Cushing, on May 31, 1867. (See Cushing record, p. 54.) I now know, from Mr. Cushing's answer in the suit lately brought against him by Mrs. Gaines, in the supreme court of the District of Columbia, that she knew that I was to be employed by him in the prosecution of the suit for the confirmation of these claims, and approved of it. My employment by Mr. Cushing was of the 8th of April, 1868, as appears by a sworn copy of my contract with him, on file in my suit against him and Mrs. Gaines, in the supreme court of the District of Columbia. I filed the suit upon these claims in the district court of the United States for the district of Louisiana, on the 23d of February, 1872, and on the 28th of February the register and receiver sent their report to the General Land Office, approving her claims, she having in the mean time had the opportunity of procuring copies of the plans I had then made out and filed with my petition. But of this matter I shall presently have more to say.

This suit, in the name of Mr. Cushing, resulted in a judgment in his favor for $4{,}122\frac{22}{100}$ acres of land, and certificates

of location or scrip for $64,101\frac{33}{100}$ acres, to be located upon any of the public lands of the United States subject to private entry, at $1.25 an acre. (Cushing Record, p. 70.)

But there are a little more than 45,000 arpents of claims, which stood in the name of Daniel Clark at the time of his death, and are not included in the conveyance of Mrs. Gaines to Mr. Cushing. The proceeds of the judgment I obtained for Mr. Cushing, are now the subject of a suit between Mrs. Gaines and Mr. Cushing, pending in the supreme court of the district of Columbia, and will therefore not be the subject of an examination or adjudication by this honorable committee. But this matter of 45,000 arpents, the last thing that Mrs. Gaines ever hopes to get from the estate of Daniel Clark, stimulates the cupidity of her lawyers, who, in my opinion, are not a bit better, but, I really think, a good deal worse than most lawyers. I excited their ire, and thus procured the personal assistance of Mrs. Gaines at the meeting of the committee, by having declared in an address to the committee, over my signature, that I should claim and recover these lands for the heirs of D. W. Coxe and Mary Clark. The executors of Daniel Clark, and at the same time agents of Mary Clark, his mother, and universal legatee under the probated will of 1811, sold to D. W. Coxe on May 8, 1819, 50,000 arpents of these Morales titles, standing in the name of Daniel Clark. (Cushing's record, p. 45.)

That claim could not be prosecuted as long as Mrs. Gaines was acknowledged as the legal representative of the late Daniel Clark. But as she has now been deprived of that illusory capacity, the claim of D. W. Coxe's heirs is valid, and can be presented. Such is also the case of the real heirs of Daniel Clark, that is, the heirs of Mary Clark, in whose favor Daniel Clark made his will in 1811, probated immediately after his death. These heirs have proved their legal status contradictorily with Mrs. Gaines in various suits, and among others in the suit of Barnes *vs.* Myra Clark Gaines and husband, 5 Robinson, (La. Rep.,) 314, and Clark *vs.*

Gaines, 13 Annual (La. Rep.,) 138. In the case in 5th Robinson those heirs of Mary Clark, actually recovered some property of the estate of Daniel Clark, of which Mrs. Gaines had taken possession.

But the prosecution of their present claims required the institution of legal proceedings in Louisiana. This portion of Mrs. Gaines' claims will, therefore, be viewed by this honoroble committee as beyond their competency, because entirely unsupported by evidence, and particularly when it is brought to the notice of the committee, that Mrs. Gaines is by no means *now* the acknowledged representative of Daniel Clark.

If it was otherwise, she ought to have proved it before the register and receiver. But I am informed that Mr. Paschal, one of her counsel, in a rhapsody, the hearing of which I was fortunately spared, contended that everything must be presumed in her favor. He went so far in this strain as to call her "the ward of the nation," although, notwithstanding the doubts that have been thrown upon her origin, the favored African descent never was or could be attributed to her. As so many incidents of Mrs. Gaines' litigation have been dragged before this honorable committee, and listened to with unexampled patience, it behooves me to expose the scandalous misrepresentations of my adversaries, and to lay before you a truthful and authentic statement of the celebrated Gaines case. I shall do so, and thereby disabuse many persons who believe that there must be something in the case, as there is so much clatter about it. I shall do so, at the risk of having more vulgar slang and abuse hurled at my head.

I am the only surviving contemporary witness of all the phases of Mrs. Gaines' legal proceedings, both in New Orleans and in Washington, and had much to do with them, as appears of record. And I affirm, with the greatest sincerity, that her whole case, from beginning to end, is a gross fraud. She had a temporary success, in consequence of singular

circumstances, well known to me, and to many of the older lawyers of New Orleans, most of whom are now dead, though one of them is now in this city. The substance of Mrs. Gaines' claim is, that she is the legitimate child of Daniel Clark, and that Daniel Clark made, in 1813, shortly before his death, a will, leaving all his property to her, and she sued Chew & Relf, who had been appointed Clark's executors, by a will of 1811, which left all his estate to his mother, Mary Clark. Chew & Relf, as executors, and also as agents of Mary Clark, administered the estate and sold the property to pay debts, for the estate was utterly insolvent. The alleged will of 1813, relied on by Mrs. Gaines, she said was lost or destroyed. Chew & Relf were both all their lives bank presidents and bank cashiers, and lived to a very advanced age in New Orleans, surrounded by the confidence and esteem of their fellow-citizens. But their banking habits contracted their minds; they could see no other merit in a lawyer but accuracy in accounts, and they employed for their defence against Mrs. Gaines the most incompetent lawyers to be found in New Orleans for such matters, while Mrs. Gaines always had the best lawyers, wonderful to relate, without ever paying them. The lawyers of Chew & Relf were the brothers Duncan, who, although very accurate in suits upon promissory notes, were utterly unfit to sift conflicting rumors, to grapple with perjured witnesses, and to bring to light complicated events, the evidence of which lay in the consciences and memories of the old population of New Orleans, with whom they never came in contact. When Mrs. Gaines first agitated her pretensions in 1834, and for many years afterwards, the city of New Orleans was full of people who had known Daniel Clark, all his associates, and all his dealings intimately, and among this class of the population the belief was universal, that Mrs. Gaines' story was a myth, and that, besides, Daniel Clark died utterly insolvent. I was myself in close communion with this old population, and knew what they could have proved,

and astonishment was constantly expressed that the Duncans allowed the old witnesses to die off without having taken their depositions. The case should at an early period have been tried upon its merits, and with proper preparation would immediately have been gained for the defence. I saw the danger of the case in such negligent hands, and frequently expressed my views in the presence and in the lifetime of the Duncans. Instead of accelerating the termination of the suit, they constantly indulged in unseemly quibbles about points of practice, questions of jurisdiction, in which they were seconded by the well-meaning but weak Judge McCaleb, who never could understand the constitutional doctrine that the United States have chancery jurisdiction in Louisiana, as well as in the other States. Thus suspicion was very naturally excited in the minds of the judges of the Supreme Court, that the defendants were afraid to meet the merits of the case. That court was wearied, expressed more than once its dissatisfaction with that course, and in 24th How., p. 556, said: "The wills of Daniel Clark have been the subject of five appeals to this court; this is the sixth."

But the more immediate cause of Mrs. Gaines' temporary success was a bungling decision of the supreme court of Louisiana, reported in 11 Annual, (Louisiana Reports,) p. 134. In that case, Mrs. Gaines filed a petition in the probate court of New Orleans, asking leave to prove *ex parte* the existence and contents of a will which she alleged her father, Daniel Clark, who died on the 18th of August, had made on the 13th of July before, in the form of an olographic will. She produced evidence of the execution and contents of the will; and the probate judge having decided against the validity of the will, she took an appeal to the supreme court, which held that the testimony exhibited was sufficient, and decreed that the will of Daniel Clark, as set forth in the plaintiff's petition, be recognized as his last will and testament, (p. 131.)

The court say, in this opinion, (p. 131,) "The plaintiff pre-

sents to us a *prima facie* case which entitles her to relief. The decision which we make does not exclude any one who may desire to contest the will with her in a direct action, and to show that no such will was executed."

A rehearing was granted in this case, and the judgment of the Supreme Court was modified, (11 Ann., 134,) so as to reserve to Richard Relf (inadvertently made a party to the record in this court) "the right of hereafter contesting the decree."

After this the heirs of Mary Clark, who was the heir of Daniel Clark, under his will of 1811, brought suit against Mrs. Gaines to set aside the probate of the will of 1813. This suit was instituted in the second district court of New Orleans, which is the probate court for the parish and city of New Orleans. That court dismissed the suit upon the exception of the defendant, that the court was without jurisdiction to set aside a judgment of the Supreme Court. On appeal, the decision of the probate court was reversed by the Supreme Court, which declared that the action was properly brought, and said, (13 Annual Rep., 140:) "It is not in this court that such an argument would meet with any favor. Our decree in the case of the succession of Clark (11th Ann.,) meant what it expressed. Our reservation of the rights of all the parties was substantial, not illusory."

This suit, the report says, was brought by the heirs of Mary Clark, all of whom were residents of other States of the Union, or of foreign countries. Chew & Relf did not join these plaintiffs, because they were both dead. And so were the Brothers Duncan, their old lawyers. This suit was before the supreme court of Louisiana, in March, 1858. What afterwards became of this suit I do not know. But Mrs. Gaines promptly gave the probate of the will of 1813 in evidence in her cases then pending in the United States circuit court, and her case against D. N. Hennen came up before the Supreme Court of the United States, in December term, 1860.

The case of Gaines *vs.* Hennen (24 How., 553) was decided in favor of Mrs. Gaines, upon the probate of the will of 1813. This was the first real success Mrs. Gaines had, and the difference between this and her previous cases before the Supreme Court is stated by the court in 24 Howard, 556, thus: "Now she comes with the decision of the supreme court of Louisiana, directing upon her application, that the will of Daniel Clark of July 13, 1813, should be recognized as his last will and testament, and that it should be recorded and executed as such." (Ibid, p. 558.) "The decree of the supreme court of Louisiana establishing the will of 1813 does not preclude any one who may desire to contest the will with Mrs. Gaines from doing it in a direct proceeding."

In the case of Gaines *vs.* New Orleans, (6 Wall., 642,) which presented in 1867 the same questions as the case of Gaines *vs.* Hennen (24 How.,) did in 1861, the Supreme Court expresses itself upon the probate of the will of 1813 in precisely the same manner, (6 Wall., 703:) "The attempt to impeach the validity of this will shows the importance attached to it by the defence in determining the issue we are now considering. But the will cannot be attacked here. Where a will is duly probated by a State court of competent jurisdiction, that probate is conclusive of the validity and contents of the will in this court." "But why if the will is invalid, has the probate of it for twelve years remained unrevoked, when express liberty was given by the supreme court of Louisiana for any one interested to contest it in a direct action with complainant. If with this clear indication of the proper course to be pursued, the probate of the will still remains unrevoked, the reasonable conclusion is, the will itself could not be successfully attacked. Be this as it may, when unrevoked it is the law of this case, and so this court held in Gaines *vs.* Hennen."

It is therefore absolutely certain that the success of Mrs. Gaines in the Hennen case, in 24 How., and in the cases with the city of New Orleans and Delacroix, in 6 Wallice, as

due to the probate of the will of 1813, admitted by the supreme court of Louisiana in 1856, (11 Annual Rep., 124.)

A direct action for the revocation of that probate was no doubt instituted very soon after the delivery of the opinion establishing the will. It was not instituted by Chew & Relf, and the brother Duncans, as their counsel, all of whom were then dead, but by the heirs of Mary Clark, the heir of Daniel Clark, under the will of 1811. (13 Annual Rep., 138.) These plaintiffs, the supreme court of Louisiana says, were all *residents of other States or of foreign countries.* Notwithstanding the death of all their former representatives in Louisiana, they were not slow in availing themselves of their right of attacking that probate; for the suit they had instituted for that purpose had already reached, in March, 1858, the supreme court of Louisiana, on an appeal from the judgment of the district court dismissing that case on Mrs. Gaines' exception to the jurisdiction, which decision was reversed by the supreme court, and the case reinstated, and declared to be properly brought. This suit, thus delayed by Mrs. Gaines' exception, did not progress far enough to produce any effect upon the two cases in 6 Wallace which were decided by Judge McCaleb before the war, as I presume.

The suit of Gaines *vs.* Hennen (24 Howard) was argued after the secession of Louisiana, and after the commencement of the war it was impossible to prosecute any law business in New Orleans. Those distant heirs of Mary Clark, mostly females, could do nothing in that suit, nor could any other party, interested in setting aside that probate in New Orleans. Nor was there any pressing necessity for doing so right away, even if it had been possible. For the confederate government passed a bill or law directing that any judgment rendered by a court of the United States should be treated as null and void in any seceded State. This condition of affairs took Mrs. Gaines to Richmond, where she made great efforts to have that to her obnoxious regulation repealed. She could, therefore, trouble no one by means of

her judgment in the Hennen case. But after the Federal authority and the Federal courts had been restored in New Orleans, she found her way back into the Federal lines in spite of Mr. Secretary Stanton. She set her batteries to work, prosecuted her cases in the Supreme Court of the United States, instituted suits against hundreds of defendants in New Orleans, disturbed an infinity of transactions, and, as her masterpiece, invented a large claim under confirmation No. 104, soon to be noticed, and by these contrivances frightened a great many people in Louisiana into compromises. The people of New Orleans who knew her claims to be a fraud, were amazed at her obtaining a decision of the highest court of the land, declaring her to be the legitimate daughter of Daniel Clark, and heir to all the property that ever stood in his name, whether he had paid for it or not, and irrespective of the amount of debts he owed at the time of his death. These poor people did not know the precise purport of the decision of the Supreme Court of the United States in the Hennen case, nor that it was the inevitable consequence of the blundering decision of their own supreme court in 1856, probating the pretended will of 1813. These people believed she had a magic power and a mysterious influence in the North, and particularly in Washington city, for which market she prepared with wonderful activity her stories, which Judge Grier called (24 How., 631,) "scandalous gossip."

All this mischief was brought about by an *ex parte* decision, in which the party affected by it had no hearing whatever.

The annals of modern jurisprudence would be searched in vain for another instance of wholesale condemnation of parties who had no hearing.

I am persuaded that no person of correct legal perception can doubt that the judgment of the supreme court of Louisiana, admitting to probate, in 1856, the pretended will of 1813, is palpably and inexcusably erroneous in not compel-

ling Mrs. Gaines, the applicant for that probate, to make the heirs of Mary Clark, in whose favor the will of 1811 had been probated, parties to that proceeding for probate.

Notwithstanding all this hardship, courts are so much bound by their own decisions, and particularly the United States courts, by the absence of all probate jurisdiction, that this pernicious probate of 1856 would never be disregarded in any future action before a court of the United States, unless it was first formally set aside in a direct action by a competent court. *And that has been done, and this legal action relieves the courts of the country from listening any more to the pretensions of Mrs. Gaines.* In December, 1871, the United States district attorney at New Orleans filed, in the Cushing case, a supplemental answer, (Cushing Record, p. 60,) setting forth that on the 27th of May, 1869, Joseph Fuentes and others had filed, in the second district court of New Orleans, a suit "for the purpose of obtaining the revocation of the decree of the probate of the alleged will of Daniel Clark, of July 13, 1813, and that said second district court had decided said case in favor of the plaintiffs," "and the probate of said will, under which alone said Myra Clark Gaines derived, or claimed to have derived title to the property herein claimed by the plaintiff, Caleb Cushing, as her vendee, has thereby been revoked and declared invalid, and the said decree of probate thereof has been annulled and recalled as absolutely null and of no effect."

To this supplemental answer the district attorney annexed the judgment of the second district court, (Cushing Record, p. 66,) the purport of which he had correctly explained in his supplementary answer, and which was rendered contradictorily with Mrs. Gaines, "both parties introducing evidence," (Cushing Record, p. 72,) and much of that evidence being such as the *ex parte* examination of 1855 had never heard of. But when that judgment was filed in the Cushing case, it had, as yet, not been approved by the supreme court of Louisiana. Since then it has been affirmed by the supreme

court of Louisiana, and a printed copy of the opinion of that court is with the papers before this honorable committee, and it will be, or rather already is, printed in the 25th volume of the Louisiana Annual Reports, which will soon be received by the law library of Congress.

With the mention of these proceedings, my remarks might stop. But some questions asked by honorable members of the committee induce me to think that they do desire to hear some explanations of this Gaines business from one who professes to know it. Besides, as I am not known to the honorable members, but expect to have the honor of appearing before them in other cases, it is, I hope, not improper nor indelicate that I should address them concerning the manner in which I was spoken of at your last meeting, in a language for which I was perfectly unprepared, and which I never heard before—and that by a man who is my senior, old as I am.

Persons who, like my present adversaries, believe that indiscriminate vituperation is favorably received by an audience, rarely care for what they say, provided it makes noise. The difference between them and me is, that I speak of matters which I know, and with which I had a good deal of connection—and they talk loosely about business of which they know nothing accurately, and which was suddenly sprung upon them, and accepted by them for the sake of notoriety, and pandering to a vicious taste. For that is all they can expect from it, unless Mrs. Gaines departs from her usual practice of never paying a lawyer. What they know thus far of my connection with the Gaines matter they must have gathered from the writing I addressed to this honorable committee under date of the 20th of last month. For I have not at all addressed the committee orally. To pretend that I would state in writing to a committee of Congress what I would not unhesitatingly avow before any number of professional gentlemen is too absurd even for my adversaries, and yet they do it.

I have already said in this paper that the claims of Mrs. Gaines do not deserve the attention of this or any other committee of Congress or of any court of justice, because they are tainted with fraud throughout, and that I have had so much to do with the business originated by her, that I considered myself competent to express a deliberate opinion on her claims, which had wrought more injury to the inhabitants of Louisiana than any one at the North has the least conception of.

I now proceed to submit a statement, as brief as possible, of my connection with the Gaines business and of those frauds in it, which fell under my immediate cognizance.

No. 1. In 1832, the supreme court of the State of Louisiana decided the case of Fletcher *et al. vs.* Cavalier *et al.*, (4 La. Rep., 267,) holding that the plaintiffs were entitled to certain lands in Louisiana. According to the law of Louisiana, the plaintiffs had to pay the value of the improvements to the defendants, who were purchasers in good faith, and the vendors of the land, who had been successively called in warranty, had to pay to the evicted defendants the *improved* value of the land. (See decision in the same case of Fletcher *vs.* Cavalier, in 10 La. Rep., 116, of 1836.) Thus the defendants, Cavalier, and the heirs of Davenport, obtained judgment for a considerable sum of money against their ultimate warrantor, the estate of Daniel Clark, the land having been sold by Daniel Clark partly in person and partly by his executors.

The parties called in warranty were the heirs of Mary Clark, who had been Daniel Clark's universal legatee under his will of 1811, probated immediately after his death. Daniel Clark had laid out long before his death an extensive tract of land, in the rear of the city of New Orleans, in lots, squares, and streets, bearing the name of Faubourg St. Jean, and many lots were still undisposed of when Clark died.

The lawyer of Cavalier and the Davenports, P. A. Rost,

procured a number of these lots to be seized by the sheriff, under the execution his clients had obtained against the aforesaid heirs of Daniel Clark. When these lots were advertised for sale, Mrs. Gaines sued out an injunction against the sheriff and the clients of Mr. Rost, on the ground that she was the true and only heir of Daniel Clark, and was not affected by the judgment rendered against the heirs of Mary Clark. About this time Mr. P. A. Rost was appointed one of the judges of the supreme court of Louisiana, and transferred his unfinished law business to me. In consequence of this, I examined the titles of Faubourg St. John, and Mrs. Gaines' pretensions, which I should have to resist. Before any progress was made in the case, I received at my office in New Orleans, in Conti street, next door to the Bank of Louisiana, three visits from General Gaines. Every time he requested me to come to see Mrs. Gaines at the St. Charles Hotel. Twice, when he came in civil dress, I pretended not to know him, and said that it was more proper that Mrs. Gaines should send her lawyer to me, and that I thought it improper for a lawyer to hold personal intercourse with the adversaries of his client; but the third time, when the General came in full uniform, and renewed that request, I could no longer doubt who he was, and not wishing to be disagreeable to a man who had gallantly exposed his life for his country, accompanied him to the St. Charles Hotel. There he introduced me into a room, where I saw Mrs. Gaines. She convulsively seized my hand, acted as if she had long sighed for an interview with me. She said emphatically that there should be no controversy between us, that the claim I represented was a just of debt of "our father," and should be paid. Then came in General Gaines, who also called this a just debt of "*our father.*" Surprised at this unexpected reception, I asked Mrs. Gaines, after I had recovered my breath, what she wanted? She replied, she would withdraw her injunction and allow the lots in Faubourg St. John to be sold, provided we paid the costs incur-

red thus far. As I knew these costs would be very small, I gladly assented to the proposition, and then, at her request, drew up a paper to be signed, and which was signed by her, the general, and myself, to the effect that she would withdraw her injunction, and no longer resist the sale by the sheriff of the lots in Faubourg St. John, and that we should pay the costs. This short paper having been signed as prepared, General Gaines immediately made a copy of it, which was also signed by all three of us; one of those two originals I deposited in the office of Joseph Cuvillier, notary public, where I saw it last year, bound up in one of his records. The lots in question were sold by the sheriff, and among them the house in which Daniel Clark had lived and died, and which was then a ruin. I paid the costs which had accrued up to the time of our agreement, and I recollect they amounted to $19.

I, however, was not the dupe of Mrs. Gaines' concern for Daniel Clark's reputation. Her injunction was pending in the fifth district court of New Orleans, and she did not want her claim to appear before a State court in Louisiana, where any case can be submitted to a jury, Louisiana having no distinct chancery jurisdiction. And notwithstanding all this, she brought suit a number of years afterwards for a number of the lots sold under this agreement. And what I have just stated is no doubt a correct reproduction of my deposition in that case.

Some of the lots so sold, afterwards became the property of the Union Company of New York, who employed, before the war, Judge E. H. Durell, as their agent, in whose name they put those lots, in which, I believe, he has no personal interest. E. H. Durell having refused to hear her cases as judge of the United States court in New Orleans, as I understand, on account of his said apparent interest, she has made him one of the constant targets of her abuse. And she also abused her lawyers, Cushing and Stone, for advising her to withdraw her claims for the lots, which had been sold under her agreement with me.

II.

The case of Patterson *vs.* Gaines, (6 How., 550,) discloses a flagitious attempt to deceive the United States courts at New Orleans, and even the Supreme Court of the United States, by a fictitious suit. In that case, (6 How., 603,) the Supreme Court held that a lawful marriage had taken place between Daniel Clark and Mrs. Gaines' mother; that Mrs. Gaines was the only issue of that marriage, and the forced heir of her said father, and as such entitled to four-fifths of his estate, notwithstanding the will of 1811 in favor of Mary Clark, which could not deprive her of her legitimate portion of Daniel Clark's estate.

This case was decided by the Supreme Court in 1848.

If this decision had been followed out, then all the owners of property that at the time of Daniel Clark's death belonged to him, might have been evicted, and it would have been unnecessary for Mrs. Gaines to apply, in 1856, to the supreme court of Louisiana for the probate of the will of 1813, except for the one-fifth of the estate, which that decision left to Mary Clark as heir under Daniel Clark's will of 1811.

But in December term, 1851, the Supreme Court of the United States rendered another and very different decision, in the case of Myra Clark *vs.* Relf & Chew, (12 How., 472.) In that opinion the court say, (p. 505:) "The complainant sues as the only legitimate child of the late Daniel Clark, who died in New Orleans, on the 13th of August, 1813 No account is prayed against Daniel Clark's executors, but the complainant seeks to recover the property sold by them, consisting of lands and slaves, on the ground that her father could not deprive her, as his legitimate child, of more than one-fifth part of his estate, by a last will, according to the laws of Louisiana, as they stood in 1813." *Ibid:* "The respondents claim under a will made by Daniel Clark in 1811, by which he devised all his property, real and personal, to

his mother, Mary Clark, and appointed R. Relf and B. Chew his executors."

Same case, (p. 537,) the Supreme Court proceeds: "On the 20th of January, 1849, Gaines and wife filed their supplemental bill against all the defendants, and, among other matters, set forth the decree made in their behalf by this court, in the case of C. Patterson *vs.* Gaines and wife, at December term, 1847; and complainants set up that decree as having adjudged and decided against all the defendants to this suit, that Myra Clark Gaines was the legitimate child and forced heiress of Daniel Clark, * * * and that, although neither of these were nominal parties to said decree, yet each of them is bound and concluded thereby, they and each of them holding the same relation to your oratrix as the said Patterson did."

The defendants reply, (p. 537,) "that said decree was brought about and procured by imposition, combination, and fraud, between said complainants and Charles Patterson, and that therefore it should not be regarded in a court of justice for any purpose whatever. That said decree was designed as no honest exposition of the merits of the case, but was brought about, allowed, and assented to, for the purpose of pleading the same as *res judicata* upon points in litigation not honestly contested."

Patterson was examined as a witness, and from his testimony the Supreme Court concludes (p. 538:) "That this proceeding on the part of Patterson and General and Mrs. Gaines was amicable, and that no earnest litigation was had is too manifest for controversy. They agreed to go to trial at once on the depositions found in the probate court; and as Patterson was to lose nothing by the event, he was of course indifferent as to what evidence might be introduced at the hearing."

"It also appears by his evidence that when a decree was obtained in the circuit court against him, his name was used to carry up an appeal to this court, but it was in fact brought

up by General and Mrs. Gaines. Patterson employed counsel here, who of course had to take the record as they found it and make the best of it as they could, and it is conceded on all hands they did so; and made the best exertion for Patterson they could do on the record brought up by him, as they supposed. Nevertheless, an affirmance of the decree was had in this court. It could hardly be otherwise in a case managed as this was, the object of the complainants below being to obtain a favorable opinion and decree, on the law and facts of a case made up at their own discretion."

So ingeniously was this matter contrived and conducted, that even the lawyers who appeared in the Supreme Court in the Patterson case, in 6th Howard, were deceived, and believed it a *bona fide* suit, as did the Supreme Court. And had it not been for the discovery of the plot, the decree of the Supreme Court in the Patterson case might have done a great deal of harm. But as matters turned out, it produced no result except to cost General and Mrs. Gaines some money for costs of court and the fee of Patterson's lawyer or lawyers.

This case of Gaines *vs.* Chew & Relf, was seriously contested, and the court, while announcing their conclusions, say, among other things, (12 How., 539:)

1st. That the complainant's two principal witnesses, Madame Despau and Madame Caillavet, are not worthy of credit.

6th. That the decree of this court in Charles Patterson's case does not affect these defendants, for two reasons: 1st, because they were not parties to it; and, 2d, because it was no earnest controversy.

7th. That the record of Desgrange's prosecution for bigamy, overthrows the feeble and the discredited evidence introduced by complainant to prove the bigamy of Desgrange, by marrying Marie Julie, *neé* Carrière, in 1794; *and establishes the fact that Desgrange was her lawful husband, in* 1802

or 1803, *when complainant alleges Daniel Clark married her mother; and that, therefore, complainant is not the lawful heir of Daniel Clark, and can inherit nothing from him.*

I have taken the liberty of italicising a portion of the passages from the decision of the Supreme Court of the United States, for the purpose of drawing attention to the status of Mrs. Gaines by that decision of 1851.

The decision in Hennen's case, in 24 Howard, of 1861, gives to Mrs. Gaines the very status which the decision of 1851 had denied to her, and declares that there was a legitimate marriage between Daniel Clark and Julie Carrière, and that Mrs. Gaines was the legitimate offspring of this marriage, and Daniel Clark's heir-at-law.

But this is the consequence of the probate of the will of 1813, by the supreme court of Louisiana in 1856, which intervened between these two contradictory decisions of the Supreme Court of the United States. But all this is now altered again through the revocation of that probate by the same authority which had previously granted it, the supreme court of Louisiana, and the condition of the Gaines claim is now what it was in 1851, immediately after the decision in Gaines *vs.* Chew & Relf, (12 How., 472.)

What respect can a court or a committee of Congress have for persons that use such stratagems to attain success? What else is that but fraud?

III.

I was not employed either in the Patterson case, or the case against Chew & Relf, just mentioned, but I had to become familiar with them in 1860. Then the case of Gaines *vs.* D. N. Hennen, decided in 24 Howard, came up. It was known in New Orleans, then the place of my residence, that I should attend the sessions of the supreme court during the December term of 1860, as I had attended that court during many winters before the war. I was employed by the city

of New Orleans to take part in the defence of that appeal. The city, though not a party to that case, was interested in the questions it presented. I therefore studied the case, and was surprised to find that the record contained but a small portion of the evidence, which was in everybody's mouth in New Orleans. From my long intercourse with the native, and particularly with the old population of New Orleans, I was aware of the existence of a great deal of evidence that I should have introduced, if I had been employed against Mrs. Gaines in the court below.

The appellee, the late Mr. D. N. Hennen, did not employ counsel, but sent in a printed brief in four pages, signed by himself. It was then pretty generally surmised in New Orleans that Mr. Hennen had an understanding with Mrs. Gaines similar to Patterson, I printed a brief of some extent, making the best use I could of the materials in the record. In that brief I declared that I appeared for the city of New Orleans, on account of the interest that city had in the questions arising in the case, and hinted at the doubts my clients had of Mr. Hennen's sincerity in his opposition to Mrs. Gaines. I took part in the oral argument in the supreme court, in February, 1861, Messrs. Perin and Cushing appearing at that argument for Mrs. Gaines, and I alone for the appellee. I strenuously insisted that the probate of the will of 1813 could not affect us, who had not been parties to it, but the court held that it could be attacked only in a direct action in a court of competent jurisdiction, and that until it was so reversed, it was the law of the case.

The decision was not rendered until some time after the argument. It could, however, produce no immediate effect in New Orleans, on account of the act of the Confederate Congress declaring the nullity of all judgments rendered by Federal courts after the secession of the State to which they applied; and New Orleans was then, and until the 25th of April, 1862, within the Confederate lines, and it was only a good while afterwards that the courts were re-established.

During the war I was in Europe and California, visiting New York occasionally, when taking shipping for either of those countries, but never Washington. I had a number of cases then pending in the Supreme Court and in the General Land Office, but my business being then all Southern business, could not be attended to, the generous fairness of the Supreme Court of the United States never permitting an advantage to be taken of unrepresented Southerners.

When hostilities had ceased in 1865, I established myself in Washington city. There I met Mr. Cushing, with whom I had been long acquainted. Knowing that I had long resided in New Orleans, he showed me a long list of pieces of property, and inquired what I knew about them. Among them was the Maison Rouge grant, which was estimated at three and a quarter millions of dollars, and I informed him that it had long since been rejected by the Supreme Court of the United States on the merits. I am not sure whether the Florida land titles standing in the name of Daniel Clark were on that list, and whether he made any inquiries about them. But if he did I could, and no doubt did, give him correct information about them, for I had brought suit upon them in 1846, under an act of Congress of June 17, 1844, in the name of Chew & Relf, as executors of Daniel Clark, and of D. W. Coxe, a purchaser of 50,000 arpents from them. The record of this suit is in the Cushing Record, p. 6. That suit was decided by the district court in favor of the plaintiffs, but the decree was reversed by the Supreme Court for want of jurisdiction.

IV.

From the above-mentioned conversations with Mr. Cushing, I saw that he still was the lawyer of Mrs. Gaines, as he had been in 1861, when he argued the Hennen case against me.

I had then a good deal of intercourse with Mr. Cushing,

he being for some years the lawyer of the Mexican Government before the United States and Mexican Joint Commission, established in this city, under the convention with Mexico of July 4, 1866, and before which my firm has a good deal of business. I was, therefore, not surprised when he put into my hands an original conveyance to himself, by Mrs. Gaines, of May 31, 1867, of Clark's Florida claims. (P. 60 of the Cushing Record.)

Mr. Cushing desired me to institute proceedings for the confirmation of these claims, and asked me for the terms of employment. I proposed to him the terms I had made in a number of other similar cases. He assented, and we reduced the agreement to writing. This was on the 8th of April, 1868. This suit had to be brought in the United States district court at New Orleans, under the act of Congress of March 2, 1867, (14 Stat., 544,) renewing for three years the act of Congress of June 22, 1860, (12 Stat., 85.)

Mr. Cushing put this conveyance into my hands without the least remark concerning the manner in which he had obtained it and what the consideration was. Mr. Cushing is not habitually very communicative. It would almost have been impolite, and have indicated distrust, if I had asked him how he got the conveyance. I saw that he had the absolute control of the claim, and that I should have nothing to do with Mrs. Gaines. He knew what opinion I entertained of Mrs. Gaines' conduct towards her own lawyers, with whom I am personally acquainted, and he was no doubt persuaded that I should not accept personal employment from her. He probably thought proper not to mention to me in the outset that Mrs. Gaines had a remaining interest in those claims, which now appears from a writing Mr. Cushing executed in her favor, explaining the trust. That paper I never read until copies of it were filed in the recent suits now pending between Mrs. Gaines and Mr. Cushing. That paper has not the least influence upon my position. My employment does not come from Mrs. Gaines, but from Mr. Cushing, who

alone can give me directions, and to whom alone I am responsible. By her conveyance she had put him in a condition to be considered by me as the unqualified owner of those claims.

The management of the claims which Mr. Cushing had put into my hands required my attendance at one time in New Orleans, where the suit had to be filed and tried in the United States district court, and at times at Washington, where an appeal to the Supreme Court of the United States was required by the 11th section of the act of 1860 in every case decided against the United States.

Of course, I had to make my arrangements according to all my business, and as I had until the 1st of March, 1870, to file this case, I did not prepare for it until 1869. On examining attentively the conveyance of Mrs. Gaines to Mr. Cushing, (Rec., p. 60,) I found two great mistakes in it. Since my employment by Mr. Cushing, on the 8th of April, 1868, I had frequent interviews with him, much more, however, on account of my Mexican claims, than about this land business; but still, I heard some expressions from him which made me think that Mrs. Gaines might still have some interest in the result of my Cushing suit, and that possibly the transfer might have been made to give to Mr. Cushing security for the payment of his professional services, or because I was to be charged with the prosecution of these claims, and she could have no personal intercourse with me, because I lost no opportunity to disparage her pretensions, and to declare them a fraud, and she never failing to speak of me in terms of insult and hatred. Very lately, and since her lawsuit with Mr. Cushing, she had herself interviewed by a reporter of a Washington paper, who thereafter printed her conversation with him, in which, of course, she grossly insulted me, but at the same time declared that it had been agreed between her and Mr. Cushing, when she made the conveyance to him, that I should be employed to obtain the confirmation of these claims. This proves that the conjecture I had

formed from some loose remarks of Mr. Cushing was well founded.

At that time, in 1869, I had an important suit for the minor children of a lady in Washington. The name of her first husband, and of his children and my clients, was Clark; her second husband's name is Quinn. Mrs. Gaines called on Mrs. Quinn, assured her that she had always felt a great interest in the Clark family, and added that having understood that her children by her first marriage had a great lawsuit, she thought it her duty as her friend to warn her against her lawyer, Louis Janin, who was sure to cheat her, as was his habit. Mrs. Quinn, who I am sure does not dislike me, although I had the misfortune of losing her suit, immediately came to see me, and reported this conversation. Mrs. Quinn, who is a very intelligent lady, expected and wanted no assurance from me that she need not believe a word of what Mrs. Gaines says of people opposed to her. But I told Mrs. Quinn that as she was on speaking terms with Mrs. Gaines, which I was not and never could be, she might render me a favor by calling on Mrs. Gaines and ascertaining something for me. I explained to Mrs. Quinn the conveyance by Mrs. Gaines to Mr. Cushing, and said that if this conveyance, as I had reason to suppose, was partly executed for other purposes, and partly for the purpose of prosecuting the confirmation of the claims to which Mrs. Gaines believed herself entitled under the will of Daniel Clark, she should include in the conveyance to Cushing some 40,000 arpents of such claims, which she had inadvertently omitted in the conveyance to Cushing. And I wrote to Mrs. Quinn a letter which explained this matter, which I requested her to show to Mrs. Gaines, and which would have perfected the matter if Mrs. Gaines had simply put at the foot of it "Approved," and signed her name to it. Soon afterwards Mrs. Quinn reported to me that Mrs. Gaines had refused to accede to my proposition, had declared that such claims must be laid before the register and receiver,

and not before the courts, and that Mr. Cushing had executed a reconveyance to her.

This answer I reported to Mr. Cushing, who declared that it was not true that he had reconveyed to her, and then searched for a paper, which he said was a copy of the paper he had given to her, and which I believe is now appearing, or has appeared, in the suits between Mrs. Gaines and Mr. Cushing, in the supreme court of the District of Columbia. From that paper he read to me that it authorized him to employ counsel for the prosecution of these land claims to confirmation. That was the part that most impressed me. I was perfectly willing to go to work for a contingent fee, for which Mr. Cushing would be responsible, provided I had nothing to do with Mrs. Gaines. Accordingly, I instituted suit in the district court of the United States for the confirmation of the claims included in Mrs. Gaines' conveyance to Caleb Cushing, (Rec., p. 60,) except the claim of 40,000 arpents, originally granted to Philip E. Dagnes (should be Dugué) by patent of January 17, 1805. Mrs. Gaines, in a fit of impatience, and in disregard of her conveyance to Caleb Cushing of May 31, 1867, (Rec., p. 60,) instituted proceedings upon these claims before the register and receiver at New Orleans, under the law of June 22, 1860. Thus she tried to interfere with the proceedings I was preparing under my contract with Caleb Cushing, of the 8th of April, 1868, and in violation of the contract which Caleb Cushing, her agent, had entered into with me. I obtained judgment for all the claims included in Mrs. Gaines' conveyance to Caleb Cushing, except the claim of 40,000 arpents, originally granted to Philip E. Dugué (not Dagues, as printed in the record, p. 60.)

Of this claim the report of the Commissioner of the General Land Office before this honorable committee says, (p. 4:) "There is no evidence to show how the present claimant derives title from Sr. Dugué." I know positively that Clark never had a title to this land, and I also know what became

of this claim; but it is not my duty to instruct Mrs. Gaines or her lawyers concerning these land claims.

Thus, with this exception, I prosecuted all the land claims mentioned in Mrs. Gaines' conveyance to C. Cushing of May 31, 1867, (p. 60,) and obtained judgments, declaring them valid, in the district court and Supreme Court of the United States.

Under the Urquhart claim, I recovered judgment only for 10,263 arpents, that being the only portion of that claim Mrs. Gaines had transferred to Cushing. The Urquhart claim was really for 50,000 arpents, all of which had been acquired by Daniel Clark from Thomas Urquhart. This is shown by the foot-note to Cosby's Rep., (American State Papers, Public Lands, Duff Green's edition, vol. III, p. 54.) For the remaining portion of the Urquhart claim, nearly 40,000 arpents, I might have brought suit, and should certainly have recovered judgment, but she declined to let me do it, when I proposed it through Mrs. Quinn. Nevertheless, before the register and receiver she claimed the whole 50,000 arpents, (pp. 8 and 9 of the communication of the Secretary of the Interior to Congress.) Of this claim the report of the Commissioner of the General Land Office says, (claim No. 2:) "But with respect to the remainder of the 50,000 arpents claimed, no report previous to that now under consideration appears to have been made," (p. 3.)

The previous report alluded to by him is that in the claim of 10,262 arpents.

And further on still, (on page 3,) the Commissioner says that "there is no evidence whatever to show that Daniel Clark died seized of any part of said claim, nor any evidence to connect the alleged title of the present claim with that of Daniel Clark."

To claim from Congress, in her own name, a confirmation of certain land claims, which already have been confirmed by the Supreme Court of the United States to Caleb Cushing, and that in opposition to Caleb Cushing, who is no party

to these proceedings, and further to demand of Congress a confirmation of 40,000 arpents, to which no title whatever emanating from the Spanish Government is shown, is a piece of audacity which can only be attempted by a person superior to all law, nor defended by any one but such counsel as she now has.

After the confirmation of his aforesaid judgment by the Supreme Court of the United States, Mr. Cushing applied to the General Land Office for the delivery of the 64,000 acre of scrip for which he had obtained judgment. He wanted to distribute this scrip according to the rights of the parties interested in it. But the Honorable Commissioner, after having had the scrip prepared, wrote a letter to the Honorable Secretary of the Interior for instructions whether he should deliver it, in consequence of the judgment of the probate or second district court of New Orleans, which he found on page 70 of the Cushing record, and of its affirmance by the supreme court of Louisiana, which annulled the probate of the will of Daniel Clark of 1813, from which the Commissioner infered that the title of Mrs. Gaines, Mr. Cushing's vendee, had failed, and that the scrip was probably the property of the true heirs of Daniel Clark. A copy of this letter of the Commissioner is now in the possession of this Honorable Committee, as well as a printed copy of the decision of the supreme court of Louisiana on the probate case.

About the same time Mrs. Gaines instituted a suit against Mr. Cushing, charging him with a fraudulent attempt to appropriate all this scrip to himself. It is to my personal knowledge that shortly before the institution of that suit he was preparing, a bill against Mrs. Gaines for specific performance and for discovery, under a contract he had with her, by which she was to pay him 6 per cent. on all amounts she had recovered or should recover in consequence of being recognized as the legal representative of Daniel Clark. She obtained from the supreme court of the District of Columbia

a provisional order restraining him from receiving that scrip from the Land Office. I thereupon brought suit in the same court against Mr. Cushing for the delivery of my portion of the scrip under my contract with him, and against Mrs. Gaines, to prevent her from interfering between me and Mr. Cushing. To this bill she filed a demurrer, saying that my contract with Cushing was null and void for champerty and maintenance, it being a stipulation for a contingent fee, and just such as are exclusively made in this class of cases. If she could succeed in this and get the scrip she would add one to the long list of lawyers who worked for her and got no fee. But I have nothing to do personally with Mrs. Gaines. My contract is with Mr. Cushing, and his quarrel with Mrs. Gaines is of no consequence to me.

The obliquity of moral vision of my adversaries goes so far as to make them say that I was in this matter Mrs. Gaines' lawyer, and betrayed her. Where will the absurdity of my adversaries stop? *Quousque tandem!* &c. When Mr. Cushing employed me to have these land titles confirmed, there was no question pending between him or anybody else I represented, and Mrs. Gaines, concerning the status of the latter as representing Daniel Clark. As long as the status claimed by her was acknowledged by the Supreme Court of the United States, I had no right or disposition to question it. This is a matter that never was thought or spoken of between Mr. Cushing and myself. If the question of that status had arisen, and I had been spoken to to maintain it, I should have emphatically declined the employment, because I am not in the habit of accepting professional employment in cases which, like that of Mrs. Gaines, I believe a fraud.

I was employed in that case to procure the confirmation of certain land claims in the name of Caleb Cushing. This I did, and there is now an end to my employment, except the payment of my compensation, for which I look to Mr. Cushing, and not to Mrs. Gaines. At no time was I called

upon to recognize, approve, or contest the manner in which Mr. Cushing had acquired title.

But when the true heirs of Daniel Clark, in consequence of the recent decision of the supreme court of Louisiana, revoking the probate of the will of 1813, showed a disposition to re-assert their rights to the estate of Daniel Clark, of which they had been defrauded by Mrs. Gaines' proceedings, then a new question arose, for the professional treatment of which I had certainly never been employed by Mr. Cushing or Mrs. Gaines. Some persons acquainted with my professional life consider me a sort of traditional adversary of Mrs. Gaines' claims to the estate of Daniel Clark, and my opposition to them has certainly the merit of being sincere and uncompromising. I was, therefore, not astonished when those heirs manifested a disposition to employ me. I have a habit, for which I claim no merit, for it is, or should be, the habit of every respectable lawyer, and that is to deal above board, and to define my position clearly. I am disposed to accept this employment, which is in entire consonance with all my antecedents and my disposition. But as this would affect the interests of Mr. Cushing, under his assignment from Mrs. Gaines, and as I entertained sentiments of esteem and friendship for Mr. Cushing, I spent a whole week at the Astor House, at New York, to see him on his return from Massachusetts to New York to embark for Europe on his new Spanish mission. My object was to assure him that my acting against him was not prompted by any feeling of hostility to him; that I had been employed many years ago by the heirs of D. W. Coxe to prosecute their rights, under the sale of 50,000 arpents, made to D. W. Coxe by Daniel Clark's executors and heirs in 1819; that I delayed acting for this claim, because, in the case of Gaines *vs.* Hennen, the Supreme Court had declared that the sales made by Clark's executors were null and void; that as the cause of this decision, the probate of the will of 1813, was now removed, it was my duty to act for that claim; that that claim

for Coxe's heirs was in partial opposition to the judgment he had lately recovered; and that this litigation would bring up the question of the effect of the late decision of the supreme court of Louisiana upon the claims of Mrs. Gaines; that the heirs of Mary Clark were aware of it, and would participate in it; and that whether they were represented by me or any other lawyer, the result would be the same. I have no doubt I convinced Mr. Cushing that there was no impropriety in my proposed course. What Mr. Cushing will do, and whether he will or can defend Mrs. Gaines against my clients, I do not know, and have no mission to inquire.

With equal explicitness I stated, in my communication to this honorable committee of the 20th of last May, that I should institute proceedings in the name of the heirs of D. W. Coxe, and of Mary Clark, for the lands described in the Report of the Commissioner of the General Land Office before the committee.

I have said in various places in this paper that gross frauds were attempted in the prosecution of this Gaines claim, and that my discovery and exposure of the boldest and greatest of them was the cause of Mrs. Gaines' exceptional detestation for me. The attempt to impose upon the Supreme Court of the United States pales in comparison with the transaction I am going to mention, the history of which is found in three printed documents, which I beg leave to submit. One is a printed copy of a letter I wrote to the Secretary of the Interior, dated Washington, Jan. 10, 1870; the second is a printed copy of a letter I wrote from New Orleans to the Commissioner of the General Land Office, under date of the 18th of September, 1871; and the third is a copy of the decision of the Hon. Columbus Delano, Secretary of the Interior, of January 5, 1871, upon Mrs. Gaines' claim mentioned in my two letters.

I beg leave to transcribe the first part of my letter to the Secretary of the Interior, of January 10, 1870:

"WASHINGTON, *January* 10, 1870.

"Hon. J. D. COX, *Secretary of the Interior.*

"SIR: I am a member of the legal profession, established in the city of Washington, and accidentally to-day acquired some information which makes it my duty to submit to you this communication. While I was in the General Land Office to-day, I understood that a patent had been projected and prepared, at the instance of Mrs. Myra Clark Gaines, and had been sent to your office for supervision. When I expressed the wish to see this patent, I was directed to the room of Judge Otto, the Assistant Secretary of the Interior, where I saw the unsigned patent.

"I respectfully protest against the issuing of this patent. Mrs. Gaines' present application is a fraud of huge dimensions, calculated to disquiet and distress many persons, and designed to levy black mail upon them. I can easily explain my reasons for making this unqualified statement, and my right to make it.

"From 1830 until 1860, I was a resident of, and practicing lawyer in, the city of New Orleans, and even since I changed my residence I have maintained a professional connection with that city, and frequently visit it. A somewhat extended practice there made me acquainted with the titles to property in and about New Orleans. When I was in that city last summer, I understood that Mrs. Gaines, in the right of Daniel Clark, claimed land on both sides of Canal street, the principal street in New Orleans, and 196 feet wide. As I knew that Daniel Clark never had owned any tract extending across Canal street, I supposed that an undue extension would be attempted to be given to Winter's "Rope-Walk," to which Clark at one time asserted title, and hence desired to see the patent in process of completion, and there found, with great astonishment, that under the claim 104, confirmed by the old board of commissioners, (2 Pub. Lands, 265, Duff Green's edition,) Mrs. Gaines claimed nearly 3,500 acres of

land lying in the heart and behind the centre of the city of New Orleans. The proposed patent is based upon a survey made last October and November by Wm. H. Wilder, styling himself United States deputy surveyor, and approved by Mr. Lynch, the recently appointed surveyor general.

"The report referred to shows that the board confirmed the title to a tract of land containing "1920 toises square," meaning 1920 superficial square toises; whereas Mr. Wilder's plan exhibits a square each side of which has 1920 toises, making an aggregate of 3,686,400 superficial square toises.

"The report further shows, that this land had been originally granted, in 1791, to Elisha Winter, by whom it had been sold.

"And in this same report this same land is confirmed, as claim No. 14, to Elisha Winter, (2 Pub. Lands, 286, Duff Green's edition,) and there it is described as having 100 feet in front by 600 in depth.

"Winter petitioned Congress for authority to have this land surveyed and to take possession of it, which the City Council prevented him from doing, and on the 20th of March, 1812, the Committee on Public Lands of the House of Representatives brought in a bill for that purpose. (2 Pub. Lands, 373.) I have reason to suppose that Daniel Clark parted with this land in his lifetime, for Chew & Relf, his executors, who disposed of the whole of his estate, never sold any part of this valuable piece of ground, and as they were his partners up to his death, and associated with him in all of his real estate speculations, they were well acquainted with them."

The second page of my letter to the Commissioner of the General Land Office of September 18, 1871, relates to the same subject as my first letter to the Secretary. In the letter to the Secretary I called a certain application of Mrs. Gaines for a patent "a fraud of huge dimensions, calculated to disquiet and distress many persons, and designed to levy blackmail upon them." In my letter to the Com-

missioner I said that "by this claim many transactio ns in the city of New Orleans were disturbed, and many, very many poor people were driven into compromises with Mrs. Gaines in order to be enabled to sell or mortgage their property."

I sent a telegram to New Orleans stating that I had denounced that claim as a fraud, and that it was being investigated. This got into the papers and put a stop to those compromises.

Thus, a claim of a little less than two superficial acres was, by a fraudulent survey, made by a United States deputy surveyor, appointed at her request, extended over a tract of $3{,}436\frac{92}{100}$ acres inside of the city of New Orleans. This survey was approved by the Surveyor General, sent to the General Land Office, and there progressed so far that a patent was drawn up for the claim so surveyed, and sent by the General Land Office to the Secretary of the Interior. The matter was investigated upon my suggestion, and ended in the decision of Mr. Secretary Delano of January 5, 1871, directing the Commissioner of the General Land Office "to cancel and destroy the draught of a patent."

I stated in my letter to the Secretary, from memory, that this was no doubt an undue extension of Winter's Rope-Walk grant, and this was, upon investigation, found to be the fact.

I was the first to denounce the fraud from Washington city, but another New Orleans lawyer, also now in Washington city, Mr. R. H. Bradford, furnished the evidence and printed it, and is, therefore, entitled to share Mrs. Gaines' detestation with me.

People out of New Orleans cannot conceive to what extent Mrs. Gaines' pretensions paralyzed transactions and injured business. The old population believed and knew her claim to be a fraud, and could not understand how she could have succeeded in the Federal courts. This they superstitiously attribute to some mysterious influence.

I take the liberty of relating here a curious incident, no doubt well recollected by Mrs. Gaines: Mr. Leopold Christ, a leading cotton broker in New Orleans, wanted to buy a house, for his family residence, situated at the corner of Rampart and Bienville streets. The price, I believe $22,000, was agreed upon and ready, but he insisted upon having Mrs. Gaines' renunciation of all claim to that property. In vain was it shown to him, by the map of her claim, which Mr. Gaines had had lithographed, that it was not within the boundaries of her claim. But he declared that there was no certainty that she would not extend her claim upon his intended purchase, to which she probably had as good a right as to the rest of her claim, and the vendors, the Cruzat family, had to procure her renunciation, for which she charged and received $500.

I trust I have said enough to show that such a suitor must not be treated with exceptional favor, but should be left to the scrutiny of courts of justice.

Respectfully submitted,

LOUIS JANIN.